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Supreme Court, U.S.
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NO. _____

In the
Supreme Court of the United States
June Term, 1987

Leland Ray Williams,

Petitioner

vs.

United States of America

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

QUESTION I: May the trial court modify a statutory defense in order to secure a conviction? Does "due process" under the Fifth Amendment to the Constitution provide for a minimum right to introduce evidence to support a statutory defense?

QUESTION II: Can a Federal Circuit Court ignore a Federal Appellate Rule of Procedure?

QUESTION III: Is the speculation of the possibility of future crimes, with which the Petitioner has not been charged, evidence on which a jury can consider regarding the commission of crimes for which the Petitioner is on trial?

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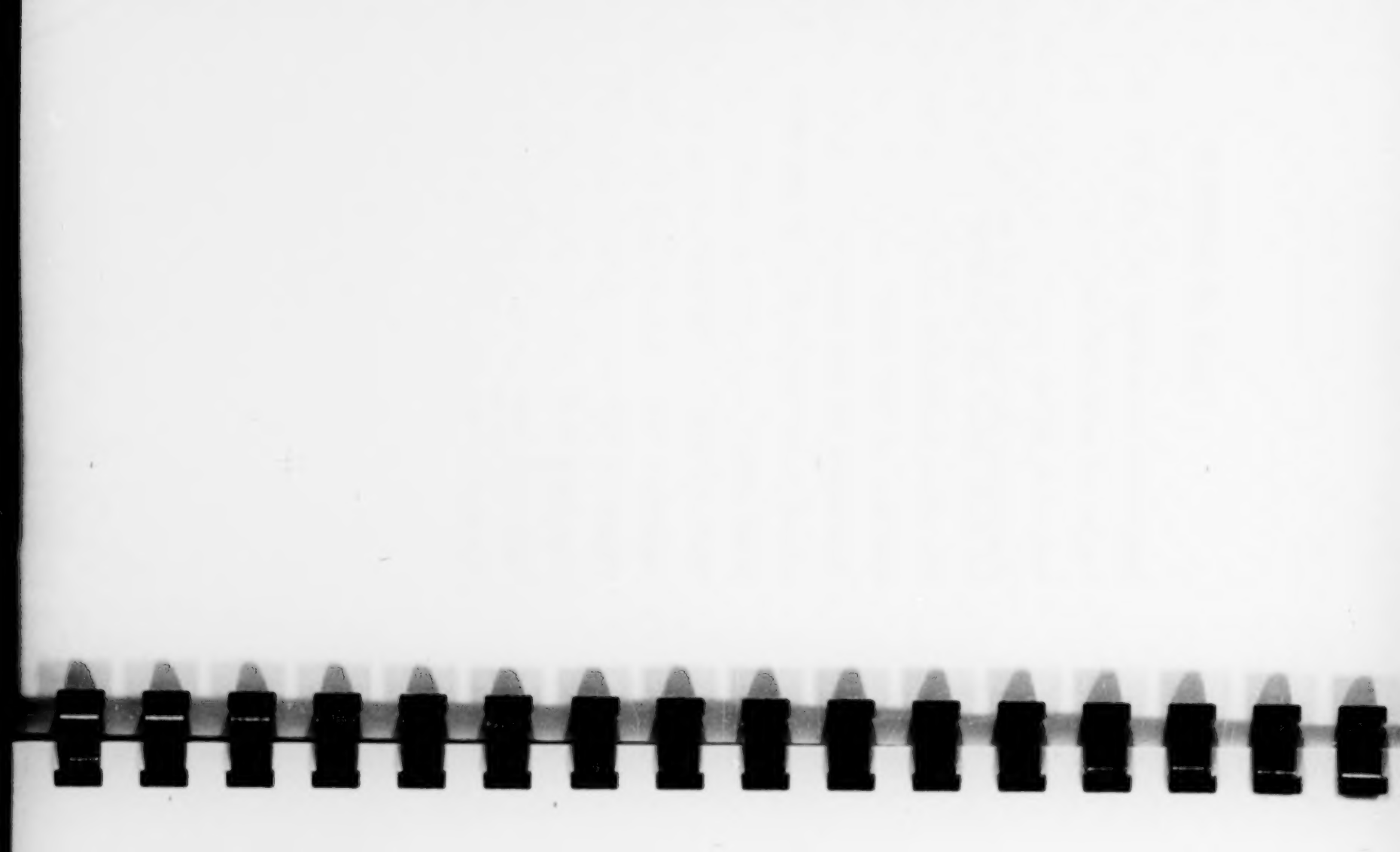

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STATUTES

26 U.S.C. 7203

UNITED STATES CONSTITUTION

Article I Forbidding Ex-Post-Facto Laws

The Fifth (5th) Amendment Right to Due Process

The Sixth (6th) Amendment Right to Confront his Accusers

MISCELLANEOUS

Rule 26 Computation and Extension of Time
Federal Rules of Appellate Procedure

Rule 31(a) Time for Serving and Filing Briefs
Federal Rules of Appellate Procedure

Rule 32(a) Form of Briefs, the Appendix and Other Papers
Federal Rules of Appellate Procedure

Local Rule 32 Form of Briefs
Rules of the United States Court of Appeals for the Fifth Circuit

Local Rule 27.1 Clerk May Rule On Certain Motions

Local Rule 27.1.5. Acceptance of Briefs in Preliminary Form
Rules of the United States Court of Appeals for the Fifth Circuit

Local Rule 27.1.11 Granting Permission to File Further Reply or Supplemental Briefs
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Rule 12b Notice Required of Intent to Introduce Expert Testimony Regarding Defendant's Mental State
Federal Rules of Criminal Procedure

Rule 704(b) Expert Witness Testimony
Federal Rules of Evidence

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of the

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Leland Ray Wiliams

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United States of America

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

To The Honorable Chief Justice of the United States, and To The Associate Justices of the United States Supreme Court:

Petitioner, Leland Ray Williams, files this Petition for Writ of Certiorari to review the judgement of the United States Court of Appeals for the Fifth Circuit which affirmed the Trial

Court's decision.

In support of the Petition, the following is respectfully shown to this Honorable Court:

OPINIONS BELOW

The opinion of the Court of Appeals has not been reported. A copy of that opinion is attached as Appendix "A". A copy of the denial of the Petition for Rehearing is attached as Appendix "B". A copy of the Trial Court's judgement is attached as Appendix "C". A copy of the Fifth Circuit's denial of a Stay of mandate pending a decision by the Supreme Court is attached as Appendix "D". The Supreme Court refused to allow the Petitioner to remain at liberty pending the determination of this Petition. A copy of this denial is attached as Appendix "E".

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The opinion and order of the Fifth

Circuit Court of Appeals is dated and was filed and entered on the 31st day of March, 1987. Petitioner filed a Petition for Rehearing on the 10th day of April, 1987. The Fifth Circuit Court of Appeals denied the Petition for Rehearing on the 27th day of April, 1987. On the 11th day of May, 1987, the Fifth Circuit Court of Appeals denied Petitioner's Motion for Stay of the Issuance of the Mandate Pending Petition for Writ of Certiorari.

Jurisdiction to review the judgement of the Court of Appeals by Writ of Certiorari is vested in the Supreme Court of the United States.

STATUTES INVOLVED

This case involved 26 U.S.C. 7203. The Petitioner was convicted of willful failure to file federal income tax returns for two (2) years.

SUMMARY OF THE CASE

Leland Ray Williams, herein called

Petitioner, was charged, by information, with willful failure to file federal income tax returns for the years 1979 and 1980. His trial was conducted June 2 through June 4, 1986, before the Southern District of Texas, Judge John V. Singleton presiding. Petitioner was found guilty on both counts.

Sentencing occurred on July 10, 1986. Appellant was sentenced to serve six (6) months in a federal penitentiary on the first count. The second count was probated over a three (3) year period, to follow the first sentence. Petitioner was allowed to remain free on his personal recognizance bond pending Appeal to the Fifth Circuit Court of Appeals.

Petitioner was a self-employed designer with a background of computer expertise. (See tr. page 227, line 2, addendum page 48, and tr. page 128, lines 18 through 21, addendum page 22). At the

request of a former employer who wished to contract for his services, Petitioner formed a corporation (see tr. page 128, lines 18 through 21, addendum page 22), bearing his initials, L.R.W. Design Inc. Petitioner filed timely, proper corporate income tax returns for said corporation, including full disclosure of all money paid as wages to the Petitioner.

Petitioner, a Navy veteran who had served in Vietnam, (see tr. page 224, lines 16 through 24, addendum page 47) had, in connection with his military service, taken an oath to uphold the Constitution and continued to feel bound by that oath when he re-entered civilian life. (See tr. page 225, lines 6 through 12, addendum page 47(a). At all times, Petitioner has been an upstanding member of the community, active in local civic affairs and a devoted husband and father. (See tr. page 225, line 17 and line 23,

addendum page 47 [a]). Petitioner embarked on a personal study of the Declaration of Independence, the Constitution of the United States of America (herein referred to as "Constitution"), numerous Supreme Court cases, and certain books and articles which discussed and interpreted the Constitution. Pursuant to his First Amendment freedom to peaceably assemble, Petitioner occasionally associated with people who met together for the purpose of discussing various interpretations of the Constitution and their applicability to the rights and duties of American citizens. Through the interaction of all of these sources, Petitioner became convinced of a need to exercise his Constitutional right to protect himself from possible self-incrimination and loss of privacy. (See tr. page 237, line 21, addendum page 55, and tr. page 238, line

8, addendum page 56). Petitioner, at all times earnestly desiring to do his duty as a citizen, wrote numerous letters to various Internal Revenue Service (herein referred to as "I.R.S." agents and other Government officials requesting instructions on how to pay his taxes in a manner which did not violate his Constitutional rights. (See tr. page 228, lines 8 through 11, addendum page 49). He received no reply other than a sympathetic one from his Congressman. (Trial Exhibit No. 22). He, therefore, filed personal income tax returns for the years 1979 and 1980 in which he attempted to exercise his Fifth Amendment right as he understood it, based on his interpretations of several Supreme Court cases, namely U.S. vs. Sullivan, 274 U.S. 259 (1927) and Garner vs. U.S., 96 S. Ct. 1178, (1976). Petitioner, growing alarmed about the enormous amount of information

the Federal Government was collecting on American citizens, filed for disclosure under the Freedom of Information Act (F.O.I.A.) and learned he had been the subject of a criminal investigation.

During trial, the Court told the Jury the opinions of the Petitioner should be ignored, (see tr. page 234, lines 21 and 22, addendum page 53). Petitioner was not allowed to put on evidence relating to his state of mind, the only factor on the issue of "willfulness" a key condition of the crime he was charged with. (See tr. page 266, line 3 and 4, addendum page 65). The Petitioner was deprived of his right to defend himself on the statutorily element of "willfulness". The Court during trial, in effect, ammended the statute by eliminating the admission of any evidence that refuted willfulness.

The Government was allowed to

introduce into evidence, over Petitioner's Counsel's Objection, what the Government described as "self-authenticating" documents which dealt with matters outside the scope of the charge for which the Petitioner was on trial. Petitioner had been charged with two (2) counts of willful failure to file federal income tax returns, for the years 1979 and 1980. The Government was allowed to put on evidence of alleged "future crimes", namely, failure to file income tax returns for the years 1981, 1982, 1983, 1984 and 1985 (See tr. page 55, line 5, addendum page 10). Since the Petitioner was not shown to have any income for those years, there was no legal requirement that he file - but the Government was allowed over objection to argue the Petitioner had violated the law in those years as well. In addition, the introduction of said documents

violated the Petitioner's Constitutional presumption of innocence. The Government with the Court's endorsement, presumed unproven guilt for those years and was allowed to argue this presumed guilt to the jury. (Tr. page 291, line 23 to page 292, line 5).

After trial, on appeal, the Government was allowed to continue deviating from statutory rules.

The Fifth Circuit Court of Appeals violated Federal Rules of Appellate Procedure in granting the Government's Motion for Extension of Time in which to file its Brief, when said Motion itself had been filed outside the time parameters within which the Brief had been due. In addition, the Fifth Circuit Court of Appeals accepted the Brief of the Appellee even after the Appellee failed to file same within even the extended period of time granted to it by

the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals accepted the Government's Brief in "Preliminary Form", not in accordance with Federal Rule of Civil Procedure 32(a) or Fifth Circuit Local Rule 32. Nearly two (2) weeks later, after Petitioner had already filed his Reply Brief, Petitioner received the printed version of the Appellant's Brief, the text of which was somewhat altered from that of the Government's "Preliminary Brief". Despite its liberal extension of privileges to the Government, the Fifth Circuit Court of Appeals refused to permit the Petitioner to file a Supplemental Reply Brief to respond to the Government's second filing, and thus deprived the Petitioner of his procedural right, as Appellant, to have the "closing argument" on appeal. This right of getting in the last word was of particular importance to

the Appellant in view of the facts that; first the burden on appeal is on the back of the Petitioner and secondly; the Fifth Circuit Court of Appeals ruled on this matter without the benefit of Oral Argument.

Thus, due to a combination of actions by the Trial Court and the Fifth Circuit Court of Appeals, the Petitioner has been unable to exercise the rights guaranteed to him under the Constitution of the United States and under the statutes mandated by Congress. The Judiciary in its zeal to punish alleged tax protesters had not just interpreted congressional intent, it has amended the statute.

STATEMENT OF THE CASE

QUESTION I.

May the Trial Court modify a statutory defense in order to secure a conviction? Does "due process" under the Fifth Amendment to the Constitution provide for a minimum right to introduce

evidence to support a statuory defense?

There are three (3) crucial elements which the Prosecution must prove in order to secure a conviction under 26 U.S. 7203 (U.S. vs. Burton, 737 F.2d 439, Fifth Circuit [1984]). These elements consist of:

1) Proof of requisite income;

2) Proof that a return was not filed; and

3) Proof that the Defendant's failure to file was "willful".

These first two (2) issues are based on objective facts which are for the jury to determine. While the third element is subjective in nature, "willfulness" or the lack of it, is still a fact which the jury must find. It is this third element we are concerned with. In crimes for which there is no stipulated mens rea, ignorance of the law is usually no excuse. However, when an element of the

crime is "willfulness", ignorance of the law is, in fact, a legitimate defense, and the state of mind of the accussed an issue of paramount importance.

The First Circuit Court of Appeals' reversal of the trial court's conviction in U.S. vs. Aitken, 755 F.2d 188, (1985) was based on its interpretation of the "willfulness" issue. Citing this Court in U.S. vs. Murdock, 290 U.S. 389, 54 S.Ct. (1933) as the "fountainhead case", the Court in Aitken repeated:

> "Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty ... should become a criminal by the mere failure to measure up to the prescribed standard of conduct."

Murdock (supra) further established the cherished principle that:

> "Ignorance of the law is no defense to crime, except that, where willfulness is an element of the crime, ignorance of a duty imposed by law may negate willfulness in failure to perform the duty."

This Court in U.S. vs. Bishop, 412

U.S. 346, 93 S.Ct. 2008, (1973) ruled:

> "The requirement of an offense, committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court."

The Court in Bishop (supra) cites Spies vs, U.S., 317 U.S. 492, 63 S.Ct. (1943), to reiterate that:

> "It is not the purpose of the law to penalize frank differences of opinion or innocent errors made despite the exercise of reasonable care."

It is obvious that the Petitioner's opinion and belief as to what the law was, and what he perceived to be his duty thereunder, was of primary importance. The Jury needed to hear his testimony concerning his state of mind in order for it to reach an informed decision as to the element of "willfulness". The Petitioner's testimony in this area was the chief evidentiary item for the Jury to consider. See U.S. vs. Garber, 607 F.2d 92, Fifth Circuit (1979). However,

when the Petitioner took the stand in direct examination and was about to testify to as to the fruits of his years of study, the following exchange ensued:

Q: And the Supreme Court cases that you read, what did they tell you with regard to your responsibilities with the Internal Revenue Service, from your interpretation?

Ms. Pecht: Objection

The Court: I'll sustain objection.

The Court: The jury will be instructed as to the law of this case. Whatever Mr. Williams might have thought the law was is of no materiality whatsoever.

(See tr. page 234, lines 15 through 22, addendum page 53).

Petitioner was thus deprived of one of the major elements of his defense on the issue of "willfulness". These harsh instructions of the Court meant that the jury was not to consider the subjective good faith of the Petitioner in his belief in his interpretations of the law and the Defendant was not to pursue this

line of testimony. From this point on, all possibility of a fair trial was precluded. In a trial in which the Defendant's theory of the case rested on his lack of willfulness, these instructions were tantamount to a directed verdict of "Guilty"! The Petitioner's entire defense was based on the issue of "willfulness" or "whatever Mr. Williams might have thought the law was....". The jury was in effect told, "Don't listen to this man." Both the Government's Brief and the Fifth Circuit Court of Appeals opinion discuss the final instructions that were given to the Jury the NEXT DAY, and conclude that a single jury instruction cannot be considered separately from the whole body of the instructions. Even though an erroneous instruction was given, under the circumstances the error was cured. They miss the point: This remark of the

Trial Court was NOT one of the formal "Jury Instructions". This fatally prejudicial remark was made during the DIRECT TESTIMONY of the Defendant, and colored the minds of the Jurors throughout the remainder of the trial. No subsequent instruction given a day later buried amidst a small booklet of instructions could cure the harm that was caused thereby. Petitioner respectfully takes issue with the opinion of the Fifth Circuit Court of Appeals deeming that the remark was mere "harmless error". The remark was fundamental error which cut out the heart of the Petitioner's defense.

In addition to the Trial Court's refusal to permit the Petitioner to testify to his own good faith beliefs, the Court excluded the testimony of two (2) expert witnesses who could have testified to the Petitioner's state of

mind. Deprived of their testimony, Petitioner was left utterly without the opportunity to offer his statutory defense on the willfulness issue.

Petitioner had introduced testimony of Dr. Robert Weinberger, PhD., a psychologist who had a longstanding professional relationship with the Petitioner and his family (see tr. page 264, lines 21 through 25, addendum page 63). Petitioner also sought to introduce testimony of Dr. Barbara Felkins, M.D., a psychiatrist who had recently examined Petitioner. (Petitioner had properly filed a Notice of Intent to Introduce Expert Testimony concerning his mental condition. [See Record page 176, addendum page 79]). At the Pre-trial Conference, the Trial Court had not yet ruled on the admissability of such evidence. (See Record, page 85, addendum page 76).

The Court was apparently heavily

influenced by Government's trial brief, which opposed the introduction of expert witness mental health practitioners, saying:

> "...The only competent witness to testify about the Defendant's state of mind is the Defendant. If the Defendant wished to place his intent and thought processes into issue in this case he must take the stand...'expert' testimony offered by the Defendant relating to his self-serving, hearsay statements, is improper."

(See Record, page 77, Addendum page 119).

The Government's position, endorsed by the Court through the Court's sustaining the Government's objection to the introduction of said expert testimony, (See tr. page 266, line 3 and 4, addendum page 63) nullifies nearly half a century of trust in the value of testimony by mental health scientists, which has been accorded them by American courts of all jurisdictional levels. In addition, this denial shifts the burden of proof in a criminal case from the

prosecution on the issue of "willfulness" to the Defendant. This Honorable Court, in both Mullaney v. Wilbur, 95 S.Ct. 1881 (1975) and in Cupp v. Naughten, 94 S. Ct. 396 (1973) has upheld the doctrine that it is not permissable to shift such a burden of proof. Is this Court's standard to be different on a tax case than on a murder or robbery case? (See further discussion of Mullaney and Cupp in Question III infra).

Petitioner made an offer of proof as to the nature of the testimony of Dr. Weinberger, showing the Doctor's impressive curriculum vitae, his empirical data evaluating Petitioner and Petitioner's family around the time of the alleged criminal violation, years before the filing of the criminal information which started the legal proceedings. During treatment and later, prior to trial, the Doctor evaluated

Petitioner's strong fixation on Constitutional rights and Government excesses. Dr. Weinberger's findings were directly on point and would have been extremely useful to the Jury in their determination of his state of mind. A layman without expert assistance would have had difficulty properly assessing the psychological profile of the Petitioner and his capacity for willful misconduct of the type alleged. (See tr. page 264, line 21, addendum page 64, through tr, page 265, line 15, addendum page 65).

There is not a single case submitted by the Government disallowing the expert testimony of someone used prior to indictment and not retained for trial <u>but</u> retained even prior to the foreseeability of trial. This Doctor knew the state of mind of Lee Williams <u>prior</u> to trial. His testimony was crucial <u>but</u> even if he were

not an expert, it should have been allowed on the basis of his personal knowledge.

A second expert, Dr. Felkins, was hired by Petitioner's attorney to examine the Petitioner. An offer of proof as to the nature of Dr. Felkins' testimony and curriculum vitae was made. Dr. Barbara Felkins, retained specifically for the trial for the reason that she represented the psychiatric branch of mental health sciences and held an M.D., (as opposed to the PhD./psychological branch), and had specific experience and training on the criminal mind, examined the Petitioner and reached strikingly similar conclusions concerning the Petitioner's psychiatric inability to conform on the specific issue of compliance to income tax regulations due to his subjective interpretation of the Constitution. Her empirical scientific methods would have

proven useful to the jury. The testimony of these two experts would have complemented each other and presented to the Jury the best level of expertise the mental health sciences had to offer.

The facts in this case can be distinguished favorably for the Petitioner from those in U.S. vs. Ellsworth, 738 F.2d 333, Eighth Circuit (1984) in which the testimony of a mental health expert was excluded. In Ellsworth, the Defendants had neglected to file their "Notice of Intent to Introduce Expert Testimony Regarding Defendant's Mental State" pursuant to Federal Rule of Criminal Procedure 12b. John and Mary Ellsworth's expert, psychiatrist Dr. Eli Chesen, was excluded by the Trial Court. Dr. Chesen would testified as to the "good faith" of both Defendants. The Eighth Circuit upheld the trial court's decision to exclude this testimony

deeming that nothing more than mere conclusions were proffered and no treatment had been conducted. All examinations were obviously made for trial purposes only. In the instant case, the required Notice was filed, reasons for conclusions were given and treatment had been administered years before the criminal investigation had begun. Petitioner's experts would not have offered mere conclusions. They would have stated their professional opinion as to the Petitioner's psychological/psychiatric condition. Any conclusions as to whether, given that mental conditon, the Petitioner had acted willfully, would have been properly left to the Jury.

The Fifth Circuit Court of Appeals cites Rule 704(b) of the Federal Rules of Evidence in its conclusion that the Trial Court did not abuse its discretion

in refusing to admit the testimony of the mental health expert witnesses. That Rule, including an amendment which took effect on October 12, 1984, prohibits expert testimony on:

"an ultimate issue to be decided by the trier of fact".

The offenses with which Petitioner was charged took place on or about April 15, 1980 and 1981, respectively when a previous version of Rule 704 was in effect, which stated in relevant part:

> "testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact".

Federal Rule of Evidence 704 (1975) as cited in U.S. vs. Prickett, 604 Fed. Supp. 407 (1985).

The drastic change of this rule worked great harm to the Petitioner. The use of a recently adopted version of a rule rather than the one in effect at the

time of the offense constitutes an abridgement of Petitioner's right under the ex-post-facto clause, Article I of the United States Constitution which is NO LESS SERIOUS because it is a "procedural matter" rather than a "statutory" provision. The effect on the Petitioner is the same.

While the Sixth Circuit Court of Appeals recently stated: "We are not persuaded by this argument" in U.S. vs. Prickett, 790 F.2d 35, Sixth Circuit (1986), Petitioner respectfully suggests that the issue requires consideration by this Honorable Court in the light of the facts of the instant case.

This Court in Beazell vs. Ohio, 269 U.S. 167, 46 S.Ct. 68 (1925) found that:

> "statutory changes in the mode of trial or the rules of evidence, which do not deprive the accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage"

are permissable. In the instant case the

disadvantage was substantial and amounted to depriving the accused of a defense, especially when considered along with the other means in which Trial Court thwarted other defense efforts.

The Court in U.S. vs. Gorman, 393 F.2d 209, Seventh Circuit (1968) permitted the testimony of psychiatrist Dr. Marvin Ziporyn as to the mental condition of Defendant Richard Gorman. The Defendant in that case was an attorney who was on trial for failing to file income tax returns for five (5) years. The doctor testified that the Defendant Richard Gorman suffered from a psychoneurotic reaction, depressive type. The following instruction was given to the jury in that case:

> "Now you have hear some considerable evidence in this case introduced relating to the defendant's mental and physical condition. Such testimony was introduced or permitted in this trial solely for one purpose and one purpose only and that purpose is so that you may consider

> whether or not the defendant's mental and physical condition caused the defendant to inadvertantly or negligently fail to make his income tax returns for the years 1959 through 1963."
>
> (See Gorman [supra] at page 211).

The Defendant in Gorman had been unhappy with the Court's instruction and appealed on the issue that the following instruction should have been given:

> "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capability either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."

The Seventh Circuit affirmed Gorman's conviction. However, in the instant case, the Petitioner would have been happy with being accorded the degree of fairness that Richard Gorman enjoyed! Gorman's doctor was permitted to testify. Petitioner's doctors were not. The jury in the Gorman case heard some instructions about the effect of mental

condition on the issue of willfulness. Petitioner's Jury did not.

The Court in U.S. vs. Erickson, 676 F.2d 408, Tenth Circuit (1982) permitted Dr. Nolan Armstrong to testify that the Defendant Thomas Erickson

> "had over the years developed a 'delusion' about the tax laws to the end that although Erickson could control his conduct, he nonetheless did not believe that he was doing anything wrong by disobeying the tax laws".

The Trial Court in Erickson instructed the Jury that:

> "Although Thomas Erickson did not assert that he was either insane or mentally incompetent at the time of alleged offenses, Erickson did assert that he lacked the mental capacity to form a specific intent, which ...was an essential ingredient of the crimes charged."

(See Erickson supra at page 410).

The Trial Court in Erickson concluded that evidence regarding Erickson's mental condition could be considered only for the purpose of determining whether Erickson had the requisite specific

intent. The Tenth Circuit found no error in said instruction. The Petitioner in the instant case requested no more than a jury instruction of that nature, and, of course, the opportunity to have his mental health experts' testimony introduced. In addition to the Court's exclusion of Dr. Robert Weinberger's testimony as an expert witness, the Court refused to allow him to testify simply as an individual who had personal knowledge of the Petitioner at the time of the alleged offense.

There are no reported cases in which the psychiatric testimony of a doctor hired prior to criminal accusation in a 26 U.S.C. 7203 charge was not allowed to testify.

By these means, ALL of the Petitioner's means of defense to the statutory element of "willfulness" were precluded. He was not allowed to

introduce books and articles on which he had relied (See transcript page 232 and 233, addendum pages 51 and 52). He was not allowed to testify as to his opinion of what the law was, so that the Jury could consider the subjective good faith of his testimony. His mental health experts were not allowed to testify as to their special knowledge of his mental condition. Dr. Robert Weinberger, Petitioner's only witness who had personal knowledge of him during the crucial years in question, was not allowed to testify. On the other hand. the Government's attorney was allowed to introduce evidence and proceed in lines of questioning which the Trial Court, in answer to Petitioner's Counsel's objection, arbitrarily declared, "It goes to the question of state of mind." (See tr. page 261 line 12 and 13, addendum page 62). State of mind evidence

was thus precluded by the Defendant but allowed by the Government no matter how bizzare or unrelated it appeared to be.

QUESTION II.

Can a Federal Circuit Court ignore a Federal Appellate Rule of Procedure?

Scrutiny of the procedural rulings of the Fifth Circuit Court of Appeals leads one to the inescapable conclusion that the Appellate Court was showing favoritism to the Government by granting it wide procedural latitude to the point of violating Federal Appellate procedural guidelines for timeliness and modifying the rules of procedure to allow the Appellee to have the closing argument on appeal. The Fifth Circuit Court of Appeals refused Petitioner's counsel permission to file a Supplementary Brief following the Government's revised brief and thus deprived Petitioner of his right, as Appellant, to have the last

word on appeal. The right to "close" was especially important to the Petitioner when considered in conjunction with the fact that Petitioner's request for oral argument was denied and that the respective Briefs of the Appellant and Appellee, and the addenda thereto, were the sole determinants of the Fifth Circuit's decision.

Petitioner timely filed his Brief for Appellant on the 19th day of November, 1986 after requesting one extension and receiving only half of it and being chastised by the Court for requesting the additional time. Pursuant to Rule 31(a) of the Federal Rules of Appellate Procedure:

> "The appellee shall serve and file his brief within thirty (30) days after service of the brief of the appellant."

According to the provisions for the computation of time set forth in Rule 26, Federal Rules of Appellate Procedure, the

Brief of the Appellee was due on the 21st day of December, 1986. No brief was timely filed by the Apellee. On the 14th day of January, 1987, the Government filed its Motion for Extension of Time. In its Motion, the Government asked the Court for an extension of time until January 19, 1987 (two [2] full months after the filing date of Apellant's Brief) in which to file its Brief for the Appellee.

The Government was unable to meet even this extended deadline which the Fifth Circuit Court of Appeals had granted. Appellee's Brief was filed in what the government called "prelimary, typewritten form" on the 23rd day of January, 1987. Local Rule 27.1. of the Rules of the United States Court of Appeals or the Fifth Circuit permits the Clerk of the Court to rule on certain procedural motions. Subsection 27.1.5.

of said Rule specifically permits the Clerk to rule on Motions seeking

> "leave to file briefs in preliminary typewritten form with a privilege of later substitution of printed copies."

In this case, the Government had not filed a motion seeking such leave. All that accompanied the Preliminary Form Brief of the Appellee was a covering letter announcing

> "Enclosed for filing is the Apellee's Brief in prelimary, typewritten form."

No permission was sought for this action. Does the Government feel its interest so protected in the Fifth Circuit Court of Appeals that it does not need to follow procedural requirements for timeliness or seeking permission before it acts? Evidently, there is good reason for it to feel this way, because all of its actions have been ratified.

Immediately upon receipt of

Appellee's Brief in Preliminary Form, on the 26th day of January, 1987, Petitioner's counsel began preparing the Reply Brief, which was filed on the 6th day of February, 1987, well within the fourteen (14) day period set forth in Rule 31(a), Federal Rules of Appellate Procedure.

In the interim, the Government had filed its printed Brief for the Appellee on the 4th day of February, 1987. Petitioner received the Government's printed brief on the 9th day of February, 1987, after the Reply Brief had already been filed. An examination of the printed brief revealed that as well as evidencing the correction of certain typographical errors, the printed brief differed somewhat in word usage from the typewritten form of Government's brief. In addition to concern over the changes, Petitioner was alarmed about the

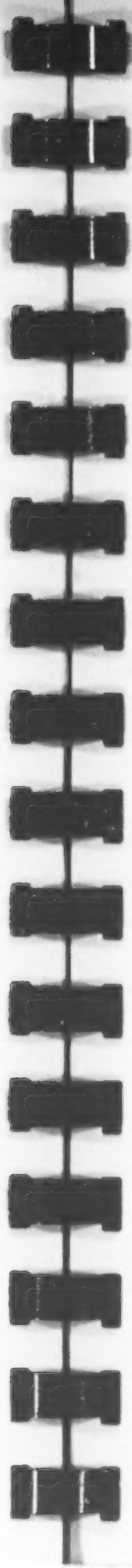
psychological impact on the Court, of the Government's having the last word. Petitioner was concerned about the possible effect on the minds of the Honorable Justices of the Fifth Circuit Court of Appeals that the most recent filing they would have received prior to making their decision was the Government's Brief, (handsomely printed at taxpayer's expense - demonstrating the far greater financial resources available to the U.S. Attorney's office than to the Petitioner). For these reasons, Petitioner's counsel prepared a "Supplemental Response to Government's Supplemental Brief." Appellant properly complied with Local Rule 27.1.11 in filing a "Motion for Permission to File a Supplemental Response". Said Motion was denied and the Supplemental Response was returned to Petitioner's counsel, unfiled. In the instant case, less

than thirty (30) days after the rejection of Petitioner's Supplemental Response, the Panel of the Fifth Circuit Court of Appeals entered its opinion affirming the Trial Court's conviction of the Petitioner. Since the Fifth Circuit had not granted Petitioner's request for oral argument, the Appellee, rather than the Appellant, had the last opportunity to influence the panel before the Justices reached their decision. This right, by long-established principle, belongs to the Appellant, who has the burden of proof on Appeal.

The Petitioner's right to due process under the Fifth Amendment of the United States Constitution was abrogated by this breach of Federal Appellate Procedure.

QUESTION III.

Is the speculation of the possibility of future crimes, with which the Petitioner has not been charged, evidence



which a jury can consider regarding the commission of crimes for which the Petitioner is on trial?

Over Petitioner's Counsel's objection, Trial Court allowed the Government's attorney to introduce into evidence Exhibits No. 11, 12, 13, 14 and 15, certified copies of Internal Revenue Service forms, described by the attorney as "self-authenticating". (See tr. page 53, lines 3 through 13, addendum page 10). The Court's allowance of these documents was highly improper and prejudicial.

Petitioner was on trial for willful failure to file personal income tax returns for the years 1979 and 1980, only. Petitioner had filed two (2) personal returns, one for each year in question. He had inserted the words "Fifth Amendment" in answer to a large portion of the blanks requesting

information. He had attached a detailed statement of his personal Constitutional beliefs, the fruits of extensive research, to these returns. Petitioner had filed corporate income tax returns for L.R.W. Design Inc. for 1978 and 1979. In these returns, he voluntarily disclosed the amounts of money which the corporation had paid to the Petitioner. The particular state of mind of the Petitioner which compelled him to simultaneously file such documents, at considerable risk to himself, may quite possibly have been elucidated by the testimony of the mental health practitioners whom the Trial Court excluded (see Question I. supra).

Instead, in an apparent effort to show the Petitioner's "state of mind" (see tr. page 261 lines 6 through 13, addendum page 62) the Trial Court permitted not only the introduction of

the aforesaid Internal Revenue Service documents related to the years 1981 through 1985, but permitted Government's attorney to cross examine Petitioner on this issue.

Government's counsel had been permitted to introduce evidence as to the non-filing of personal income tax returns for the subsequent years 1981 through 1986, and have same considered by the Jury, without the burden of showing even one shred of evidence that Petioner had the requisite income to have been required to file for those years. In simple terms, the Jury was being asked to presume him "Guilty" of willful failure to file income tax for those five (5) years and then, with that in mind, consider whether or not he was guilty of that offense in the years for which he was being tried! Such tactics are blatantly unAmerican! Petitioner was

being "accused" of crimes and deprived of his Sixth Amendment right to confront his accusers. How could Petitioner's attorney cross-examine a "self-authenticating" piece of paper?

Petitioner had not been charged with any offense for the years 1981 through 1985, presumably because there was no evidence of any wrongdoing. If there had been, no doubt it would have been uncovered by the three highly-trained Special Agents, assigned, at taxpayers' expense, to build up a dossier on Petitioner. The Government was allowed to make a significant psychological impression on the Jury through its introduction of "evidence" as to alleged future crimes without having the burden of proving the elements of these crimes. If, in fact, these crimes had existed, the proper procedure for the Government to have followed would have been to

charge him with seven (7) counts of violating 26 U.S.C. 7203 rather than merely two (2). The Government, knowing that it would not have been able to bear the full burden of proof, did not do so.

In Petitioner's trial on willful failure to file income tax returns for the years 1979 and 1980, the Government should have been barred from reference to the question of whether or not tax returns for future years had been filed especially when they were not shown to be required. When the Court permitted Government's attorney to proceed with this line of questioning, Petitioner's counsel, not having prepared any defense against this unexpected and unprecedented tactic, had no choice but to instruct his client to rely on his Fifth Amendment right not to testify against himself in this regard. This necessary instruction tended to prejudice the Petitioner in the

eyes of the Jury, considering the fact that Petitioner had relied on the Fifth Amendment on his tax returns for the years in question. Petitioner was maneuvered into this predicament by the Trial Court's conduct in allowing Government's attorney to introduce evidence and carry on cross examination in this completely irrelevant area over Defendant's objection.

The Government's tactics create a new legal theory of the "presumption of guilt". Due process requires that the prosecution prove beyond a reasonable doubt every fact necessary to constitute the crime charged. (See In Re: Winship, 397 U.S. 358 [1970]). Heretofore, this Court has often the staunch advocate of the presumption of innocence. This Court has not permitted the burden of proof to be shifted from the prosecution to the defense in the past. In Mullaney v.

Wilbur, 95 S.Ct. 1881 (1975) this Court struck down a Maine statute distinguishing "murder" and "manslaughter" which this Court felt had placed an unconstitutional burden on defendants to prove that they had acted "in the heat of passion on sudden provocation" in order for their offense to be considered "manslaughter". This Court reasoned that the burden of proof should be on the prosecutor to prove that the defendant DID NOT act "in the heat of passion on sudden provocation" if the prosecutor wished to prove that a certain homicide was "murder" rather than "manslaughter". In Cupp vs. Naughten, as in Mullaney, this Court cited Winship, supra, as to the proper bearer of the burden of proof. In Cupp, the defendant was convicted of armed robbery and brought a habeas corpus proceeding in which he challenged the jury instructions

in an Oregon state court which asked the jurors to presume that the witnesses were speaking the truth unless their words or demeanor clearly demonstrated otherwise. Defendant Cupp had not taken the stand. While this Court ruled, in Cupp, that the challenged instruction was not Constitutional error (because it showed how the 'presumption of truth' could be overcome), this Court upheld the cherished principle that the burden of proof is on the prosecution and that the cloak of the presumption of innocence must be clearly wrapped around a defendant until PROVEN GUILTY!

In the instant case, the Jury had no reason to doubt the sacrosanct presumption of truthfulness inherent in a "self-authenticating certified copy" placed into evidence by an Assistant U.S. Attorney! Petitioner was placed in an indefensible position by the introduction

of these five (5) documents and the questioning of him on same. Petitioner was required to prove his innocence for the years 1981 through 1985 inclusive or be presumed guilty of the years in question.

REASONS FOR ALLOWANCE OF THE WRIT

The conduct of the Trial Court in this case has violated the provisions of the Fifth Amendment of the Constitution requiring due process and the separation of powers doctrine by allowing the trial court to amend legislation. The trial court has simply decided to change the law eliminating the word "willful" from 26 U.S.C. 7203 by telling the jury the Petitioner's opinion concerning the law was irrelevant. The Fifth Circuit Court of Appeals recognizing the error in this instruction, basically ruled: Hold on Trial Court, you can't do that. The Petitioner's state of mind is important.

But, since you corrected yourself the next day after the close of evidence in your instructions, we'll call it harmless error. The jury was thus required to perform mental acrobatics that would challenge the skill of the best jurist on this bench. On day one, they were required to disregard the Defendant's state of mind. They were told it was unimportant and furthermore, no state of mind evidence was allowed! On day two, they were told the Defendant's state of mind is important. Disregard what I said yesterday. Consider the Defendant's state of mind. The trial court changed the law. The appellate court blessed the results but not the changes and rewrote a statute on procedure for the Government's convenience. This court should decide whether future legislation regarding tax issues shall be made by Congress or the Courts. If evidence of non-willfulness

is irrelevant, then the word in the statute is irrelevant.

The procedural evidenciary rule relied on by the Fifth Circuit Court of Appeals in affirming the Trial Court's exclusion of the mental health expert witnesses constitutes an ex-post-facto provision in violation of Article I of the Constitution. The Fifth Circuit Court of Appeals has ignored Federal Rules of Appellate Procedures and its own Local Rules. The conviction of the Petitioner by the Trial Court, and the affirmation of said conviction by the Fifth Circuit Court of Appeals are at variance with prior decisions of the First, Fifth, Seventh, and Tenth Circuits and of the Supreme Court of the United States. A defendant must be presumed innocent until proven guilty and a defendant must have the right to testify and introduce evidence as to elements of his statutory

defense.

CONCLUSION

For all of these reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL LOUIS MINNS, P.L.C.

BY: _____

Michael Louis Minns
10200 Old Katy Road #101
Houston, Texas 77043
(713) 461-5471

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, do hereby certify that a true and correct copy of this Petition for Writ of Certiorari to United States Court of Appeals Fifth Circuit, has been properly served upon the United States of America, by and through its attorneys of record, Nancy K. Pecht, Assistant U.S. Attorney, James R. Gough, Assistant U.S. Attorney, P.O. Box 61129, Houston, Texas 77208-1129, by certified mail, return receipt requested, on this the 15th day of July, 1987.

_____
Michael Louis Minns

(Appendices follow)

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2557

Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LELAND RAY WILLIAMS,
Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR-H-86-79)

(March 31, 1987)

Before REAVLEY, JOHNSON and DAVIS, Circuit Judges.

PER CURIAM:*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on th public and burden on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Leland Ray Williams appeals his conviction for willful failure to file federal income tax returns for 1979 and 1980 in violation of 26 U.S.C. § 7203. We affirm.

I.

Williams filed federal income tax returns for 1979 and 1980 on which he stated: "Object—self-incrimination" in place of the requested information.

At trial, the government easily established that Williams had sufficient income in 1979 and 1980 to require him to file a return and that the returns he filed did not provide sufficient information to compute his tax liability. The only significant issue presented to the jury was whether Williams' failure to file was willful as required by 26 U.S.C. § 7203. Williams argued that he believed that the forms he filed complied with the law and that his failure to file was therefore not willful.

II.

Williams raises numerous points on appeal; we address each in the order raised.

A.

Williams strenuously argues that the district court erred when it remarked that: "Whatever Mr. Williams might have thought the law was is of no materiality whatsoever."[1]

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1. The district court made this remark during the following exchange:

* * *

[Defendant's counsel]: And the Supreme Court cases that you read, what did they tell you with regard to the responsibilities with the Internal Revenue Service, from your interpretation?

We agree with Williams that the court's statement is incorrect. If Williams genuinely misunderstood what information the law required him to include on his return and because of this error of law he did not include the required information, he is not guilty of a *willful* failure to file. *See United States v. Burton*, 737 F.2d 439, 441 (5th Cir. 1984). However, we review jury instructions as a whole, not in isolated parts. *United States v. Martin*, 790 F.2d 1215, 1219 (5th Cir. 1986). "The instructions need not be perfect in every respect provided that the charge in general correctly instructs the jury, and any error resulting from the erroneous instruction is harmless. If, considered as a whole, the instructions are comprehensive, balanced, fundamentally accurate, and not likely to confuse or mislead the jury, the charge will be deemed adequate." *Armco Indus. Credit Corp. v. SLT Warehouse Co.*, 782 F.2d 475, 483 (5th Cir. 1986).

At the conclusion of the evidence, the district court gave a complete instruction to the jury on the meaning of willfulness.[2] The charge made it clear that Williams could

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[Government counsel]: Objection.
[The court]: I'll sustain the objection.
[The court]: The jury will be instructed as to the law of this case. Whatever Mr. Williams might have thought the law was is of no materiality whatsoever.

* * *

2. The court's charge provided in pertinent part:
The term "willfully" used in connection with this offense means voluntarily, purposely, deliberately, and intentionally as distinguished from accidently, inadvertently or negligently.
Mere negligence, even gross negligence, is not sufficient to constitute willfullness in cases such as this case.
The failure to make a timely return is willful if the defendant's failure to act was voluntary and purposeful and with the specific intent to fail to do what he knew the law requires to be done;

not be guilty of the necessary intent to willfully fail to file a tax return if he believed in good faith that he had done all that the law requires. We are persuaded that the comprehensive definition of willfulness given by the court at the conclusion of the evidence clarified any misunderstanding that may have resulted from the court's earlier spontaneous remark. *See Gradsky v. United States*, 342 F.2d 147, 151-52, *vacated on other grounds*, 383 U.S. 265 (1966).

B.

Williams also complains that the district court erred by precluding him from giving the jury his own interpretation of several Supreme Court cases relating to a taxpayer's responsibilities to the IRS. The district court ruled that the testimony was irrelevant; the court remarked that it would provide the necessary legal instructions.

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that is to say, the bad purpose or evil motive to disobey or disregard the law which requires him to file a timely return which discloses to the government facts material to the determination of his tax liability.

There is no necessity that the government prove that the defendant had an intention to defraud it or evade the payment of any tax, for the defendant's failure to file to be willful under this provision of the law.

On the other hand, the defendant's conduct is not willful if you find that he failed to file a return because of negligence, inadvertence, accident, or reckless disregard for the requirements of the law, or *due to his good faith misunderstanding of the requirements of the law.*

If a person in good faith believes that he has done all that the law requires, he cannot be guilty of the necessary intent to willfully fail to file a tax return. A reasonable though erroneous assertion of the Fifth Amendment in good faith can therefore be considered by you as some evidence of Mr. Williams' failure to file a completed tax return was not willful. (emphasis added)

Under Rule 403, Fed. R. Evid.,[3] even if Williams' interpretation of the Supreme Court cases was relevant, the court was obliged to weigh the probative value of this evidence against potential prejudice and confusion. The balance struck by the district court will not be overturned absent a clear abuse of discretion. *United States v. Burton*, 737 F.2d 439, 443 (5th Cir. 1984) (citing *Ballou v. Henri Studios, Inc.*, 656 F.2d 1147, 1153 (5th Cir. 1981)).

The district court was justifiably concerned about the confusion that might arise were Williams allowed to give a detailed interpretation of individual Supreme Court cases. The district court did allow Williams to explain, in a narrative fashion, his understanding of the law and give the reasons for his beliefs. We are persuaded that the district court did not abuse its discretion by requiring Williams to explain his understanding of the law in this way rather than permitting him to engage in a detailed case by case discussion.

C.

Williams next contends that the district court erroneously excluded the opinion testimony of two mental health experts who were prepared to testify that Williams sincerely believed his tax returns were lawful.

Trial courts have unusually wide discretion to accept or reject the testimony of expert witnesses. *United States*

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3. Rule 403, Fed. R. Evid., provides:
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

v. Cronn, 717 F.2d 164, 170 (5th Cir. 1984). As a general rule, opinion testimony such as that proffered in this case concerning a defendant's state of mind or intent is to be avoided. *See United States v. Chavis*, 772 F.2d 100, 107 (5th Cir. 1985); *United States v. Ruppel*, 666 F.2d 261, 270 (5th Cir. 1982); Rule 704(b), Fed. R. Evid. The district court clearly did not abuse its discretion by excluding this testimony.

D.

Williams next argues that the district court erred in permitting the government to introduce certified copies of IRS forms showing Williams' failure to file tax returns for the years 1981-1985. Relatedly, Williams complains that the district court permitted the government to question Williams concerning his failure to file in these years.

Under Rule 404(b), Fed. R. Evid.,[4] the district court has broad discretion to admit evidence of other crimes, wrongs or acts to prove such things as motive, intent or knowledge. *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978) (en banc); *United States v. Whiteside*, No. 86-2425, Slip Op. at 2570-2573 (5th Cir. Jan. 21, 1987).

Williams testified that he thought he was following the law when he declined to furnish pertinent income information in his 1979 and 1980 returns. Williams was noti-

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4. Rule 404(b), Fed. R. Evid., provides:
Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

fied, however, in each of those years that his returns did not comply with the law. The government sought to establish that Williams, in spite of notice in 1979 and 1980 that he was required to file complete tax returns, nonetheless failed to file any returns for 1981-85. These documents were probative of Williams' intent and state of mind in 1979 and 1980. *See Whiteside,* slip op. at 2573. The district court did not abuse its discretion by admitting this evidence.

E.

Next, Williams contends that his first amendment rights to peaceably assemble, speak freely and petition the government for redress of grievances were violated by admission of evidence that he was an active participant in the "Texas Patriots."

Williams defended the charges against him on grounds that he thought he complied with the law. The Texas Patriots to which Williams belonged urged its members to not pay taxes; it counseled its members to either not file a return or to file a fifth amendment return. The fact that Williams was active in this tax protest organization is probative of whether he failed to file completed returns because he was operating under a genuine misapprehension of the law. Consequently, we find no error in the admission of this evidence. *See* Rule 403, Fed. R. Evid.

F.

Williams argues that the district court acted in a partisan manner thereby entitling him to a new trial.

We have examined each of Williams contentions of partisan conduct and find no merit to his arguments.

G.

Williams next contends that the trial court's jury instructions amounted to a directed verdict on the issue of whether his 1979 and 1980 income tax returns met the minimum legal requirements. On this issue, the district court instructed the jury:

> The 1040 forms that Mr. Williams sent to the IRS have been admitted into evidence. In regard to those forms, you are instructed that a 1040 form which does not contain sufficient financial information to enable the Internal Revenue Service to determine that individual's tax liability is not a tax return within the meaning of the law.

In *United States v. Grote*, 632 F.2d 387, 391 (5th Cir. 1980), this court found a substantially identical instruction on this issue to be an accurate statement of the law. *Id.* As in *Grote*, the responsibility to determine whether the forms submitted by Williams included enough information for the IRS to compute his tax liability was left to the jury. Williams' contention that this instruction amounted to a directed verdict is without merit.

H.

Williams finally argues that the district court did not permit him to fully cross-examine several of the government's witnesses on their motivations for testifying.

Limitation of the scope of cros-examination is within the discretion of the trial court and may be reversed only when that discretion is clearly abused. *United States v. Carlock*, slip op. No. 85-4741, Slip op. at 1521, 1543 (5th Cir. Dec. 9, 1986) (citing *United States v. Gordon*,

780 F.2d 1165, 1175 (5th Cir. 1986)). A review of the record discloses that the district court only limited cross-examniation to keep it within the scope of direct examination and prevent irrelevant questioning. Thus, we find no clear abuse of discretion.

AFFIRMED.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2557

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LELAND RAY WILLIAMS,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

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(April 27, 1987)

ON PETITION FOR REHEARING

Before REAVLEY, JOHNSON and DAVIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ W. EUGENE DAVIS
United States Circuit Judge

APPENDIX "C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DOCKET NO. H-86-00079-01

UNITED STATES OF AMERICA

v.

LELAND RAY WILLIAMS
9015 Abbeydale
Houston, Texas 77031

(Filed August 8, 1986)

JUDGMENT AND COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date, July 10, 1986, with counsel, Michael Minns, pleading not guilty.

There being a verdict of guilty.

Defendant has been convicted as charged of the offense of failure to file income tax returns, in violation of Title 26, United States Code, Section 7203, as charged in Counts 1 and 2 of the criminal information.

OFFENSE COMMITTED: 1979 and 1980 calendar tax years.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant

is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS as to Count 1.

As to Count 2, imposition of sentence is suspended; THREE (3) YEARS probation, with supervision, with the following special conditions:

1. Timely filing of all tax forms;
2. Payment of all taxes, including interest and penalties, during the period of probation.

Sentence imposed on Count 2 is consecutive to Count 1.

The court orders commitment to the custody of the Attorney General and recommends that the defendant be allowed to remain on bond pending appeal.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal or other qualified officer.

/s/ JOHN V. SINGLETON, JR.
John V. Singleton, Jr.
U. S. District Judge

APPROVED: /s/ J. R.

Date: August 8, 1986.

APPENDIX "D"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2557

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LELAND RAY WILLIAMS,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

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(Filed May 11, 1987)

ORDER:

The motion of APPELLANT for stay and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

The motion of APPELLANT for stay and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The

Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ W. EUGENE DAVIS
United States Circuit Judge

APPENDIX "E"

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

June 16, 1987

Michael Louis Minns
10200 Old Katy Road, #101
Houston, Texas 77043

RE: Leland R. Williams vs. United States A-911

Dear Mr. Minns:

Your application for stay pending timely filing and disposition of petition for writ of certiorari was presented to Justice White on June 12, 1987 who has endorsed thereon the following:

"The application is denied.
Byron R. White
6/15/87"

Very truly yours,

JOSEPH F. SPANIOL, Clerk
By: Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

pk

cc: Charles Fried, Solicitor General of the United States